

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FEDEX FREIGHT, INC.

Employer,

and

32-RC-144041

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN,
INDUSTRIAL AND ALLIED WORKERS OF AMERICA,
LOCAL 439, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS,

Petitioner.

**Request for Special Permission to Appeal the Regional Director's Denial of the Employer's
Motion to Postpone the Hearing on the Employer's Objections to the Conduct of the
Election**

Pursuant to Sections 102.65 and 102.67 of the Rules and Regulations of the National Labor Relations Board (hereinafter "NLRB" and "NLRB Rules"), FedEx Freight, Inc. ("Employer" or "Company" or "FedEx") requests that it be granted special permission to appeal the Regional Director's Denial of the Employer's Motion to Postpone the Hearing on the Employer's Objections to the Conduct of the Election ("Motion"). If granted, the Employer also submits its Motion to appeal the Regional Director's Denial of the Employer's Motion to Postpone the Hearing on the Employer's Objections to the Conduct of the Election which accompanies this Request attached as **Exhibit 1**.

I. Background.

On January 7, 2015, the International Brotherhood of Teamsters, Local 439, (the "Union"), filed a representation petition with respect to employees at the Company's facility located in Stockton, California. On January 16, 2015, an amended representation petition was

filed by the Union. On January 20, 2015, a Joint Stipulation of Facts was filed by the parties. The Regional Director's Decision and Direction of Election ("DDE") was issued on February 12, 2015. On February 26, 2015, the Employer's Request for Review of the DDE was filed with the NLRB. The NLRB issued an Order on Employer's Request for Review of the DDE on March 11, 2015.

On March 12-13, 2015, the election was held pursuant to the DDE. The Union won the election. The Employer timely filed objections to the result of the election on March 20, 2015. The Regional Director issued the report on the objections and set a hearing on the Employer's objections. On May 19, 2015, the Regional Director rescheduled the hearing for June 8, 2015. On June 1, 2015, the Employer filed the Motion to Postpone/Reschedule the Hearing (attached hereto as **Exhibit 2**). On June 2, 2015, the NLRB denied the Employer's Motion (attached hereto as **Exhibit 3**).

On March 23, 2015, attorneys for the Employer started to interview employees to gather evidence in support of the objections in strict compliance with the Board's Johnnie's Poultry procedures. The next day, on Tuesday, March 24, 2015, the Union filed charge, 32-CA-148787, alleging Johnnie's Poultry violations. The Union specifically alleges that the Employer's interviews violated the National Labor Relations Act ("NLRA") even if Johnnie's Poultry assurances were given because the questioning had no legitimate basis and/or its scope exceeded any legitimate basis; was inherently coercive as it occurred in an atmosphere of Union animus and other unfair labor practices.

Several weeks later, on April 2, 2015, the Union filed four separate charges: 32-CA-149384, 32-CA-149386, 32-CA-149389, and 32-CA-149422. On April 13, 2015, the Union filed two additional charges, numbers 32-CA-149988 and 32-CA-149994. The Union filed 32-CA-

146666 prior to the NLRB election. None of the unfair labor practice charges allege employees were discharged in violation of the NLRA.

II. Special Permission Should Be Granted to Appeal the Regional Director's Denial of the Employer's Motion to Postpone the Hearing on the Employer's Objections to the Conduct of the Election.

The Employer filed the Motion so that the hearing would be postponed until the Charges pending in Case Nos. 32-CA-146666, 148787, 149384, 149386, 149389, 149422, 149988 and 149994 have been fully investigated and the Region has made a merit/no merit determination on them. Pursuant to Section 102.67(c) of the NLRB Rules, requests for review will be granted when one of the following exists:

- (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent;
- (2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party;
- (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error; or
- (4) That there are compelling reasons for reconsideration of an important Board rule or decision.

The Employer asserts bases Nos. 1, 3 and 4 listed above are present in the instant case. The Employer asserts holding the hearing on June 8th will be prejudicial to the Employer and could unfairly impede the presentation of the Employer's evidence because the pendency of the aforementioned charges presents the Employer and its counsel with a serious and what appears to be a potentially insoluble ethical dilemma. On one hand, as officers of the court representing the Employer, we are obliged to do everything within the bounds of the law and ethics to advance FedEx's legitimate interests including interviewing potential employee witnesses and preparing those witnesses we deem material for testimony at the objections hearing. But, on the other hand,

the Employer's ability to do so is chilled by the pending charges and the threat of the Employer being charged with yet further allegations of Johnnie's Poultry violations should the Region conclude that the Employer's otherwise permissible hearing preparation has occurred in an atmosphere that is not free from union animus or that it is accompanied by significant alleged unfair labor practices that may render the preparatory conversations with employees arguably coercive. The Employer should not be unnecessarily placed in this uncertain ethical position. Nor should the Employer be placed at risk of potential liability and its due process rights compromised simply because the Region is anxious to move this R case, particularly when there is an adequate alternative – completing the Region's unfair labor practice charge investigation first.

From its charge in Case No. 32-CA-148787 and based on the comments of the Region's investigator, it is clear that the Union contends that the nature of the Employer's objections (all of which the Region set for hearing after its investigation) and the substantiality of its evidence in support thereof is in some way substantive proof of the Employer's wrongful conduct or of its wrongful intent in the other pending ULP charges. Thus, the Union (and the Region, should it go to complaint), may later seek to link the objections hearing to the pending charges. Assuming *arguendo*, the validity of the Union's claim and there is a linkage between the R and C cases, then piecemeal litigation of those intertwined cases is inappropriate and highly prejudicial. Indeed, while the Employer rejects the Union's assertions as being without any basis in fact or in law, the Employer also asserts it is unfair to conduct the R case hearing at a time when the Employer's ability to put on its very best case may be compromised by virtue of the pending charges if that proof or the purported lack thereof may, itself, later be cited as adverse evidence

in subsequent C cases and, thus, may have a potentially material impact on the outcome of the pending unfair labor practice cases.

Due process requires that a fact finder, in this case, the hearing officer, be a neutral and totally disinterested third party who is unbiased and immune to even the appearance of command influence. The investigation of these charges is ongoing and the Region may soon take the Union's side in some or all of its charges. If a complaint issues in the pending charges, it will be because the Region has authorized that issuance and has become adverse to the Employer. At the same time, however, it will be the Region's employee who will hear the Employer's objections. Because of the adversity that appears to be developing between the Employer and Region, there is a substantial question as to whether the Region can supply the parties with a neutral fact-finder to preside over the June 8th hearing, to hear and consider the evidence and to issue a report on objections, who can also meet this most fundamental due process requirement.

Given the ethical and due process concerns articulated and because no genuine or actual harm can be shown to the parties by the requested postponement of the hearing in this matter, we respectfully ask that the notice calling for the hearing to take place on June 8th be vacated and the hearing on the objections in this matter be reset for a later and yet to be determined date following the Region's investigation of the aforesaid unfair labor practice charges.

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Based on the above, the Employer submits special permission should be granted to appeal the Regional Director's Denial of the Employer's Motion to Postpone the Hearing on the Employer's Objections to the Conduct of the Election.

Respectfully submitted this 2nd day of June, 2015.

JACKSON LEWIS P.C.
Attorneys for Employer
Mark S. Ross
50 California Street
San Francisco, CA 94111-4615



By: _____
Mark S. Ross

EXHIBIT 1

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FEDEX FREIGHT, INC.

Employer,

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32-RC-144041

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN,
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**Motion to Appeal the Regional Director's Denial of the Employer's Motion to Postpone the
Hearing on the Employer's Objections to the Conduct of the Election**

Pursuant to Sections 102.65 and 102.67 of the Rules and Regulations of the National Labor Relations Board (hereinafter "NLRB" and "NLRB Rules"), FedEx Freight, Inc. ("Employer" or "Company" or "FedEx") requests that its Motion to Appeal the Regional Director's Denial of the Employer's Motion to Postpone the Hearing on the Employer's Objections to the Conduct of the Election be granted.

I. Background.

On January 7, 2015, the International Brotherhood of Teamsters, Local 439, (the "Union"), filed a representation petition with respect to employees at the Company's facility located in Stockton, California. On January 16, 2015, an amended representation petition was filed by the Union. On January 20, 2015, a Joint Stipulation of Facts was filed by the parties. The Regional Director's Decision and Direction of Election ("DDE") was issued on February 12,

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On March 23, 2015, attorneys for the Employer started to interview employees to gather evidence in support of the objections in strict compliance with the Board's Johnnie's Poultry procedures. The next day, on Tuesday, March 24, 2015, the Union filed a charge, 32-CA-148787, alleging Johnnie's Poultry violations. The Union specifically alleges that the Employer's interviews violated the National Labor Relations Act ("NLRA") even if Johnnie's Poultry assurances were given because the questioning had no legitimate basis and/or its scope exceeded any legitimate basis; was inherently coercive as it occurred in an atmosphere of Union animus and other unfair labor practices.

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II. FedEx's Motion to Appeal the Regional Director's Denial of the Employer's Motion to Postpone the Hearing on the Employer's Objections to the Conduct of the Election Should be Granted.

The Employer filed its Motion so that the hearing would be postponed until the Charges pending in Case Nos. 32-CA-146666, 148787, 149384, 149386, 149389, 149422, 149988 and 149994 have been fully investigated and the Region has made a merit/no merit determination on them. Pursuant to Section 102.67(c) of the NLRB Rules, requests for review will be granted when one of the following exists:

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- (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error; or
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The Employer asserts bases Nos. 1, 3 and 4 listed above are present in the instant case. The Employer asserts holding the hearing on June 8th will be prejudicial to the Employer and could unfairly impede the presentation of the Employer's evidence because the pendency of the aforementioned charges presents the Employer and its counsel with a serious and what appears to be a potentially insoluble ethical dilemma. On one hand, as officers of the court representing the Employer, we are obliged to do everything within the bounds of the law and ethics to advance FedEx's legitimate interests including interviewing potential employee witnesses and preparing those witnesses we deem material for testimony at the objections hearing. But, on the other hand, the Employer's ability to do so is chilled by the pending charges and the threat of the Employer

being charged with yet further allegations of Johnnie's Poultry violations should the Region conclude that the Employer's otherwise permissible hearing preparation has occurred in an atmosphere that is not free from union animus or that it is accompanied by significant alleged unfair labor practices that may render the preparatory conversations with employees arguably coercive. The Employer should not be unnecessarily placed in this uncertain ethical position. Nor should the Employer be placed at risk of potential liability and its due process rights compromised simply because the Region is anxious to move this R case, particularly when there is an adequate alternative – completing the Region's unfair labor practice charge investigation first.

From its charge in Case No. 32-CA-148787 and based on the comments of the Region's investigator, it is clear that the Union contends that the nature of the Employer's objections (all of which the Region set for hearing after its investigation) and the substantiality of its evidence in support thereof is in some way substantive proof of the Employer's wrongful conduct or of its wrongful intent in the other pending ULP charges. Thus, the Union (and the Region, should it go to complaint), may later seek to link the objections hearing to the pending charges. Assuming arguendo, the validity of the Union's claim and there is a linkage between the R and C cases, then piecemeal litigation of those intertwined cases is inappropriate and highly prejudicial. Indeed, while the Employer rejects the Union's assertions as being without any basis in fact or in law, the Employer also asserts it is unfair to conduct the R case hearing at a time when the Employer's ability to put on its very best case may be compromised by virtue of the pending charges if that proof or the purported lack thereof may, itself, later be cited as adverse evidence in subsequent C cases and, thus, may have a potentially material impact on the outcome of the pending unfair labor practice cases.

Due process requires that a fact finder, in this case, the hearing officer, be a neutral and totally disinterested third party who is unbiased and immune to even the appearance of command influence. The investigation of these charges is ongoing and the Region may soon take the Union's side in some or all of its charges. If a complaint issues in the pending charges, it will be because the Region has authorized that issuance and has become adverse to the Employer. At the same time, however, it will be the Region's employee who will hear the Employer's objections. Because of the adversity that appears to be developing between the Employer and Region, there is a substantial question as to whether the Region can supply the parties with a neutral fact-finder to preside over the June 8th hearing, to hear and consider the evidence and to issue a report on objections, who can also meet this most fundamental due process requirement.

Given the ethical and due process concerns articulated and because no genuine or actual harm can be shown to the parties by the requested postponement of the hearing in this matter, we respectfully ask that the notice calling for the hearing to take place on June 8th be vacated and the hearing on the objections in this matter be reset for a later and yet to be determined date following the Region's investigation of the aforesaid unfair labor practice charges.

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Based on the above, the Company submits its Motion to Appeal the Regional Director's Denial of the Employer's Motion to Postpone the Hearing on the Employer's Objections to the Conduct of the Election should be granted.

Respectfully submitted this 2nd day of June, 2015.

JACKSON LEWIS P.C.
Attorneys for Employer
Mark S. Ross
50 California Street
San Francisco, CA 94111-4615



By: _____
Mark S. Ross

EXHIBIT 1 TO MOTION TO APPEAL



Jackson Lewis P.C.
50 California Street
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Tel 415 394-9400
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ALBANY, NY	GRAND RAPIDS, MI	NEW ORLEANS, LA	RAPID CITY, SD
ALBUQUERQUE, NM	GREENVILLE, SC	NEW YORK, NY	RICHMOND, VA
ATLANTA, GA	HARTFORD, CT	NORFOLK, VA	SACRAMENTO, CA
AUSTIN, TX	HOUSTON, TX	OMAHA, NE	SAINT LOUIS, MO
BALTIMORE, MD	INDIANAPOLIS, IN	ORANGE COUNTY, CA	SAN DIEGO, CA
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CHICAGO, IL	LONG ISLAND, NY	PHILADELPHIA, PA	SEATTLE, WA
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DALLAS, TX	MIAMI, FL	PORTLAND, OR	WASHINGTON, DC REGION
DAYTON, OH	MILWAUKEE, WI	PORTSMOUTH, NH	WHITE PLAINS, NY
DENVER, CO	MINNEAPOLIS, MN	PROVIDENCE, RI	
DETROIT, MI	MORRISTOWN, NJ	RALEIGH-DURHAM, NC	

June 1, 2015

VIA E-FILING AND FACSIMILE

George P. Velastegui
Regional Director
National Labor Relations Board
Region 32
1301 Clay St – Suite 300N
Oakland, CA 94612-5221
Facsimile: (510) 637-3315

RE FedEx Freight, Inc.
Case No. 32-RC-144041

Dear Regional Director Velastegui:

FedEx Freight, Inc. (FedEx or the Employer) hereby requests/moves for a postponement of the June 8, 2015 hearing re: objections in the above-captioned matter until the charges pending in Case Nos. 32-CA-146666, 148787, 149384, 149386, 149389, 149422, 149988 and 149994 have been fully investigated and the Region has made a merit/no merit determination on them. This request/motion is predicated on the following:

1. Holding a hearing on June 8 as now scheduled will be prejudicial to the Employer and could unfairly impede the presentation of the Employer's evidence because the pendency of the aforementioned charges presents the Employer and its counsel with a serious and what appears to be a potentially insoluble ethical dilemma. On one hand, as officers of the court representing the Employer, we are obliged to do everything within the bounds of the law and ethics to advance FedEx's legitimate interests including interviewing potential employee witnesses and preparing those witnesses we deem material for testimony at the objections hearing. But, on the other hand, our ability to do so is chilled by the pending charges and the threat of our client being charged with yet further allegations of Johnnie's Poultry violations should the Region conclude that our otherwise permissible preparation, which should include the questioning of employees, has occurred in an atmosphere that is not free from union animus or that it is accompanied by significant alleged unfair labor practices that may render the preparatory conversations with employees arguably coercive. We should not be unnecessarily placed in this uncertain ethical position. Nor should our client be placed at risk of potential

liability and its due process rights compromised simply because the Region is anxious to move this R case, particularly when there is an adequate alternative – completing the Region's ULP charge investigation first. As a former field attorney and a long-time practitioner before the Agency, I understand the need to process cases in a timely fashion. But sometimes, especially in cases like the instant, speed for the sole sake of speed becomes the enemy of procedural due process. Here, other than a desire to advance this R case to a conclusion, there is no reason for forcing this matter to a hearing on June 8th. Given the ethical and due process concerns articulated here and because no genuine or actual harm can be shown to the parties by the requested postponement of hearing in this matter, we respectfully ask that the notice calling for the hearing to take place on June 8th be vacated and the hearing on the objections in this matter be reset for a later and yet to be determined date following the Region's investigation of the aforesaid unfair labor practice charges.

2. From its charge in Case No. 32-CA- 148787 and based on the comments of the Region's investigator, it is clear that the Union contends that the nature of the Employer's objections (all of which you have set for hearing) and the substantiality of its evidence in support thereof is in some way substantive proof our client's wrongful conduct or of its wrongful intent in the other pending ULP charges. Thus, the Union (and the Region, should it go to complaint,) may later seek to link the objections hearing to the pending charges. Assuming arguendo, the validity of the Union's claim and there is a linkage between the R and C cases, then piecemeal litigation of those intertwined cases is inappropriate and highly prejudicial. Indeed, while we reject the Union assertions as being without any basis in fact or in law, we also think it unfair to conduct the R case hearing at a time when our client's ability to put on its very best case may be compromised by virtue of the pending charges if that proof or the purported lack thereof may, itself, later be cited as adverse evidence in subsequent C cases and, thus, may have a potentially material impact on the outcome of the pending unfair labor practice cases. For this reason as well, we urge that the June 8th hearing be vacated, pending the completion of the ULP charges' investigation.

3. Due process requires that a fact finder, in this case, the hearing officer, be a neutral and totally disinterested third party who is unbiased and immune to even the appearance of command influence. The investigation of these charges is ongoing and the Region may soon take the Union's side in some or all of its charges. If a complaint issues in the pending charges, it will be because the Region has authorized that issuance and become adverse to our client. At the same time, however, it will be the Region's employee who will hear the Employer's objections. Because of the adversity that appears to be developing between our client and your office, there is a substantial question as whether the Region can supply the parties with a neutral fact-finder to preside over the June 8th hearing, to hear and consider the evidence and to issue a report on objections, who can also meet this most fundamental due process requirement. For this reason as well, I ask that the June 8th hearing be put over and that the objection in this R case be set for hearing after the investigation of the C cases is concluded.


I have made Costa Kerestenzis, counsel for the Union, aware of this postponement request; Mr. Kerestenzis is not in agreement.

Given the closeness of the hearing date in this matter, I would appreciate your prompt action on this request/motion.

Thank you.

Very truly yours,

JACKSON LEWIS P.C.



Mark S. Ross

KNM/cc

cc: Costa Kerestenzis, Esq. (via e-mail to ckerestenzis@beesontayer.com)
Cynthia Rence (via e-mail to Cynthia.Rence@nlrb.gov)
Nicolas L. Tsiliacos (via e-mail to Nicholas.Tsiliacos@nlrb.gov)

CERTIFICATE OF SERVICE

Case Name: FedEx Freight, Inc.

Case No.: 32-RC-144041

I, Cheryl Cleary, declare that I am employed with the law firm of Jackson Lewis P.C., whose address is 50 California Street – 9th Floor, San Francisco, CA 94111; I am over the age of eighteen (18) years and am not a party to this action.

On June 1, 2015, I served the attached **letter moving for a postponement of hearing, dated June 1, 2015, from Mark S. Ross to the Regional Director**, in this action as follows:

Costa Kerestenzis, Esq.
Beeson, Tayer & Bodine - APC
520 Capitol Mall, Suite 300
Sacramento, CA 95814
Phone: (916) 325-2100
Fax: (916) 325-2120
ckkerestenzis@beesontayer.com
Petitioner - Legal Representative

☒ **BY ELECTRONIC MAIL (EMAIL):** I attached a full, virus-free pdf version of the document to electronic correspondence (e-mail) and transmitted the document from my own e-mail address, clearyc@jacksonlewis.com, to the persons at the e-mail addresses above. There was no report of any error or delay in the transmission of the e-mail.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 1, 2015, at San Francisco, California.

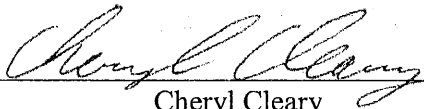

Cheryl Cleary

EXHIBIT 2 TO MOTION TO APPEAL



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 32
1301 Clay St Ste 300N
Oakland, CA 94612-5224

Agency Website: www.nlr.gov
Telephone: (510)637-3300
Fax: (510)637-3315

June 2, 2015

MARK S. ROSS, ATTORNEY
JACKSON LEWIS P.C.
50 CALIFORNIA STREET
SAN FRANCISCO, CA 94111-4615

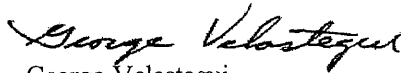
COSTA KERESTENZIS, ESQ., ATTORNEY FOR LOCAL 439
BEESON, TAYER & BODINE
520 CAPITOL MALL, SUITE 300
SACRAMENTO, CA 95814

Re: FedEx Freight, Inc.
Case 32-RC-144041

Dear Mr. Ross and Mr. Kerestenzis:

I have reviewed and considered the Employer's June 1, 2015 request that the postelection hearing on the Employer's Objections to the conduct of the election in this matter be postponed. The Employer's request is hereby denied, and the hearing will be conducted as previously scheduled starting at 9:00 a.m. on Monday, June 8, 2015, and consecutive days thereafter until concluded, at Room 381, Administration Building, located at 44 North San Joaquin Street, Stockton CA, 95202.

Very truly yours,


George Velastegui
Regional Director

cc:

JW GURTIS
FEDEX-FREIGHT, INC.
4520 S HIGHWAY 99
STOCKTON, CA 95215-8235

IVAN H. RICH JR., MANAGING DIRECTOR
LABOR RELATIONS
FEDEX FREIGHT, INC.
1715 AARON BRENNER DR, STE 600
MEMPHIS, TN 38120-1444

ROBERT NICEWONGER
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 439
1531 E FREMONT ST
STOCKTON, CA 95205-4458

EXHIBIT 2



Jackson Lewis P.C.
50 California Street
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ALBANY, NY	GRAND RAPIDS, MI	NEW ORLEANS, LA	RAPID CITY, SD
ALBUQUERQUE, NM	GREENVILLE, SC	NEW YORK, NY	RICHMOND, VA
ATLANTA, GA	HARTFORD, CT	NORFOLK, VA	SACRAMENTO, CA
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DENVER, CO	MINNEAPOLIS, MN	PROVIDENCE, RI	
DETROIT, MI	MORRISTOWN, NJ	RALEIGH-DURHAM, NC	

June 1, 2015

VIA E-FILEING AND FACSIMILE

George P. Velastegui
Regional Director
National Labor Relations Board
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1301 Clay St – Suite 300N
Oakland, CA 94612-5221
Facsimile: (510) 637-3315

RE FedEx Freight, Inc.
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1. Holding a hearing on June 8 as now scheduled will be prejudicial to the Employer and could unfairly impede the presentation of the Employer's evidence because the pendency of the aforementioned charges presents the Employer and its counsel with a serious and what appears to be a potentially insoluble ethical dilemma. On one hand, as officers of the court representing the Employer, we are obliged to do everything within the bounds of the law and ethics to advance FedEx's legitimate interests including interviewing potential employee witnesses and preparing those witnesses we deem material for testimony at the objections hearing. But, on the other hand, our ability to do so is chilled by the pending charges and the threat of our client being charged with yet further allegations of Johnnie's Poultry violations should the Region conclude that our otherwise permissible preparation, which should include the questioning of employees, has occurred in an atmosphere that is not free from union animus or that it is accompanied by significant alleged unfair labor practices that may render the preparatory conversations with employees arguably coercive. We should not be unnecessarily placed in this uncertain ethical position. Nor should our client be placed at risk of potential

liability and its due process rights compromised simply because the Region is anxious to move this R case, particularly when there is an adequate alternative – completing the Region's ULP charge investigation first. As a former field attorney and a long-time practitioner before the Agency, I understand the need to process cases in a timely fashion. But sometimes, especially in cases like the instant, speed for the sole sake of speed becomes the enemy of procedural due process. Here, other than a desire to advance this R case to a conclusion, there is no reason for forcing this matter to a hearing on June 8th. Given the ethical and due process concerns articulated here and because no genuine or actual harm can be shown to the parties by the requested postponement of hearing in this matter, we respectfully ask that the notice calling for the hearing to take place on June 8th be vacated and the hearing on the objections in this matter be reset for a later and yet to be determined date following the Region's investigation of the aforesaid unfair labor practice charges.

2. From its charge in Case No. 32-CA- 148787 and based on the comments of the Region's investigator, it is clear that the Union contends that the nature of the Employer's objections (all of which you have set for hearing) and the substantiality of its evidence in support thereof is in some way substantive proof our client's wrongful conduct or of its wrongful intent in the other pending ULP charges. Thus, the Union (and the Region, should it go to complaint,) may later seek to link the objections hearing to the pending charges. Assuming *arguendo*, the validity of the Union's claim and there is a linkage between the R and C cases, then piecemeal litigation of those intertwined cases is inappropriate and highly prejudicial. Indeed, while we reject the Union assertions as being without any basis in fact or in law, we also think it unfair to conduct the R case hearing at a time when our client's ability to put on its very best case may be compromised by virtue of the pending charges if that proof or the purported lack thereof may, itself, later be cited as adverse evidence in subsequent C cases and, thus, may have a potentially material impact on the outcome of the pending unfair labor practice cases. For this reason as well, we urge that the June 8th hearing be vacated, pending the completion of the ULP charges' investigation.

3. Due process requires that a fact finder, in this case, the hearing officer, be a neutral and totally disinterested third party who is unbiased and immune to even the appearance of command influence. The investigation of these charges is ongoing and the Region may soon take the Union's side in some or all of its charges. If a complaint issues in the pending charges, it will be because the Region has authorized that issuance and become adverse to our client. At the same time, however, it will be the Region's employee who will hear the Employer's objections. Because of the adversity that appears to be developing between our client and your office, there is a substantial question as whether the Region can supply the parties with a neutral fact-finder to preside over the June 8th hearing, to hear and consider the evidence and to issue a report on objections, who can also meet this most fundamental due process requirement. For this reason as well, I ask that the June 8th hearing be put over and that the objection in this R case be set for hearing after the investigation of the C cases is concluded.


I have made Costa Kerestenzis, counsel for the Union, aware of this postponement request; Mr. Kerestenzis is not in agreement.

Given the closeness of the hearing date in this matter, I would appreciate your prompt action on this request/motion.

Thank you.

Very truly yours,

JACKSON LEWIS P.C.



Mark S. Ross

KNM/cc

cc: Costa Kerestenzis, Esq. (via e-mail to ckerestenzis@beesontayer.com)
Cynthia Rence (via e-mail to Cynthia.Rence@nrlb.gov)
Nicolas L. Tsiliacos (via e-mail to Nicholas.Tsiliacos@nrlb.gov)

CERTIFICATE OF SERVICE

Case Name: FedEx Freight, Inc.

Case No.: 32-RC-144041

I, Cheryl Cleary, declare that I am employed with the law firm of Jackson Lewis P.C., whose address is 50 California Street – 9th Floor, San Francisco, CA 94111; I am over the age of eighteen (18) years and am not a party to this action.

On June 1, 2015, I served the attached **letter moving for a postponement of hearing, dated June 1, 2015, from Mark S. Ross to the Regional Director**, in this action as follows:

Costa Kerestenzis, Esq.
Beeson, Tayer & Bodine - APC
520 Capitol Mall, Suite 300
Sacramento, CA 95814
Phone: (916) 325-2100
Fax: (916) 325-2120
ckerstenzis@beesontayer.com
Petitioner - Legal Representative

[✓] **BY ELECTRONIC MAIL (EMAIL):** I attached a full, virus-free pdf version of the document to electronic correspondence (e-mail) and transmitted the document from my own e-mail address, clearyc@jacksonlewis.com, to the persons at the e-mail addresses above. There was no report of any error or delay in the transmission of the e-mail.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 1, 2015, at San Francisco, California.


Cheryl Cleary

EXHIBIT 3



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 32
1301 Clay St Ste 300N
Oakland, CA 94612-5224

Agency Website: www.nlrb.gov
Telephone: (510)637-3300
Fax: (510)637-3315

June 2, 2015

MARK S. ROSS, ATTORNEY
JACKSON LEWIS P.C.
50 CALIFORNIA STREET
SAN FRANCISCO, CA 94111-4615

COSTA KERESTENZIS, ESQ., ATTORNEY FOR LOCAL 439
BEESON, TAYER & BODINE
520 CAPITOL MALL, SUITE 300
SACRAMENTO, CA 95814

Re: FedEx Freight, Inc.
Case 32-RC-144041

Dear Mr. Ross and Mr. Kerestenzis:

I have reviewed and considered the Employer's June 1, 2015 request that the postelection hearing on the Employer's Objections to the conduct of the election in this matter be postponed. The Employer's request is hereby denied, and the hearing will be conducted as previously scheduled starting at 9:00 a.m. on Monday, June 8, 2015, and consecutive days thereafter until concluded, at Room 381, Administration Building, located at 44 North San Joaquin Street, Stockton CA, 95202.

Very truly yours,

George Velastegui
George Velastegui
Regional Director

cc:

JW GURTIS
FEDEX FREIGHT, INC.
4520 S HIGHWAY 99
STOCKTON, CA 95215-8235

IVAN H. RICH JR., MANAGING DIRECTOR
LABOR RELATIONS
FEDEX FREIGHT, INC.
1715 AARON BRENNER DR, STE 600
MEMPHIS, TN 38120-1444

ROBERT NICEWONGER
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 439
1531 E FREMONT ST
STOCKTON, CA 95205-4458

CERTIFICATE OF SERVICE

Case Name: FedEx Freight, Inc.

Case No.: 32-RC-144041

I, Katie Post, declare that I am employed with the law firm of Jackson Lewis P.C., whose address is 5000 Birch Street, Suite 5000, Newport Beach, CA 92660. I am over the age of eighteen (18) years and am not a party to this action.

I hereby certify that on June 2, 2015, I caused the foregoing **Request for Special Permission to Appeal the Regional Director's Denial of the Employer's Motion to Postpone the Hearing on the Employer's Objections to the Conduct of the Election and Motion to Appeal the Regional Director's Denial of the Employer's Motion to Postpone the Hearing on the Employer's Objections to the Conduct of the Election** to be filed with the Office of the Executive Secretary, National Labor Relations Board, using the CM/ECF system.

I further certify that I caused a copy to be served via electronic mail upon the following:

Costa Kerestenzis, Esq.
Beeson, Tayer & Bodine - APC
520 Capitol Mall, Suite 300
Sacramento, CA 95814
Phone: (916) 325-2100
Fax: (916) 325-2120
ckkerestenzis@beesonstayer.com

Petitioner - Legal Representative

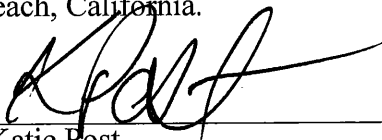
George P. Velastegui
Regional Director
National Labor Relations Board
Region 32
1301 Clay St – Suite 300N
Oakland, CA 94612-5221
George.velastegui@nrlrb.gov

Regional Director – Region 32

Teamsters Local 439
1531 East Fremont Street
Stockton, CA 95205
Rob_nicewonger@yahoo.com

[✓] **BY ELECTRONIC MAIL (EMAIL):** I attached a full, virus-free pdf version of the document to electronic correspondence (e-mail) and transmitted the document from my own e-mail address, katie.post@jacksonlewis.com, to the persons at the e-mail addresses above. There was no report of any error or delay in the transmission of the e-mail.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 2, 2015, at Newport Beach, California.


Katie Post

4851-9595-2164, v. 1